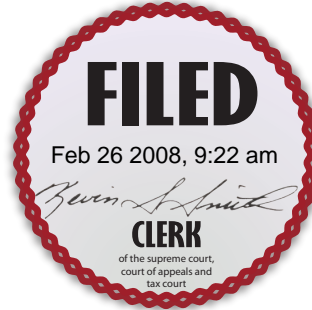


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY	)	
TERMINATION OF THE PARENT/CHILD	)	
RELATIONSHIPS OF A.S., H.S., and	)	No. 45A03-0709-JV-421
T.S, Children, and KELLY STACY	)	
and ANDREW STACY, Parents.	)	

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Mary Beth Bonaventura, Judge  
Cause Nos. 45D06-0608-JT-79, JT-80, and JT-81

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**February 26, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellants-Respondents Andrew and Kelly Stacy (“the Parents”) appeal an order terminating their parental rights to A.S., H.S., and T.S. (“the Children”) upon the petition of the Appellee-Petitioner Lake County Department of Child Services (“the DCS”). We affirm.

## **Issue**

The Parents present a single issue for review: Whether the DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of parental rights.

## **Facts and Procedural History**

In December of 2000, the DCS received the first referral regarding the Stacy family. Investigator Sam Heredia found “garbage, toys, clothes throughout the trailer” as well as unwashed dishes and a dirty refrigerator. The Parents advised Heredia that an intruder had broken in and left those conditions. (Tr. 125.) Heredia determined that the allegation of neglect was substantiated but agreed to give the Parents a week to clean up their trailer. The Parents took steps to remedy the conditions and the referral case file was closed.

In May of 2002, a second referral resulted in a second investigation and substantiation of neglect. The Stacy family was now in a house, which was in the process of being remodeled. The Parents were advised to clean their home, they made efforts to do so, and the referral case file was closed.

A third referral was made in April of 2003. The investigator observed that the yard and house were strewn with garbage. Some rooms had standing water. The Parents reported that a water leak had forced them to begin remodeling. At this time, the Parents agreed that

their children should be temporarily placed in the care of their paternal grandparents. The Parents made certain improvements and the referral case file was closed. In November of 2003, a fourth referral was made, again due to the residential conditions. The Parents made efforts to remedy the situation and the DCS closed the referral case file on December 5, 2003.

On December 16, 2003, when Kelly returned from work, she found four-month-old K.S., who had been left in Andrew's care, unresponsive. K.S. was pronounced dead at a local hospital, and a police investigation ensued. Corporal Larry Gonzalez of the Crown Point Police Department arrived at the Stacy home and found the Children's maternal grandfather clearing a path with a shovel. Officer Gonzalez observed filthy clothing, piles of garbage, and rotting food. He was barely able to open some interior doors because of the litter. Officer Gonzalez initiated DCS intervention.

Investigator Fairfax Green went to the Stacy home. He observed that the bed where the baby had died "had garbage piled on it, along with blankets and other stuff." (Tr. 158.) Green also observed food stuck to the floors and walls and children's fecal-stained underclothing lying around. The three surviving Stacy children were removed from the home. They were lice-infested and A.S. had scabies "from her throat all the way down to her feet." (Tr. 199.)

The Parents began receiving family reunification services. On December 4, 2004, Ka.S. was born. On June 30, 2005, the DCS received a referral regarding the conditions of the Stacy home. The DCS investigator found garbage, clothing, and clutter in Ka.S.'s room. The infant appeared to be congested and in need of medical treatment. She had scabies, and

had been fed low-fat milk, which apparently caused digestive distress. Ka.S. was removed and placed in foster care with her siblings.<sup>1</sup>

The Parents were convicted of four counts each of child neglect and were incarcerated. The family reunification services, which had been provided for the preceding eighteen months, were terminated upon the Parents' incarceration.

On August 14, 2006, the DCS petitioned to terminate the relationship between the Parents and three of their children, A.S., H.S., and T.S. A termination hearing was conducted on May 10, May 21, and May 30, 2007. On June 11, 2007, the trial court ordered the termination of parental rights. This consolidated appeal ensued.

## **Discussion and Decision**

### **A. Standard of Review**

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

### **B. Requirements for Involuntary Termination of Parental Rights**

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The

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<sup>1</sup> M.S. was subsequently born and was placed in the guardianship of a paternal grandparent.

purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) One (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544.

Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

### C. Analysis

Andrew and Kelly contend that the DCS presented insufficient evidence to establish a reasonable probability that the conditions that resulted in the Children's removal will not be remedied or that the continuation of the parent-child relationships would pose a threat to the Children. More specifically, Andrew and Kelly claim that, in light of their poverty, they exercised reasonable efforts to remodel their prior residence. They further contend that the conditions leading to the Children's removal will be remedied when they are released from incarceration because Kelly inherited a residence that is habitable.

It is well-settled that a parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Among the circumstances that a trial court may properly consider are a parent's criminal history, historical failure to provide support, and lack of adequate housing and employment. McBride v. Monroe Cty. Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

At the time of the termination hearing, Andrew and Kelly were incarcerated. Prior to the incarceration, Andrew had been unable to maintain full-time employment. Kelly's employment at a grocery deli was the primary family income. However, according to Andrew's testimony, most of Kelly's wages went to buy materials for home remodeling. Andrew did "side jobs" to get "money that [they] were using to eat." (Tr. 250.)

Caseworker Alma Collins testified that Parents had been able to clean their home for inspection but had problems maintaining it. Despite the long-term intervention of service providers, it was difficult for the Parents to "maintain a minimally clean home and hygiene

on a day to day basis.” (Tr. 57.) The Parents appeared for supervised visitation at The Treehouse so unkempt that staff members advised the Parents that they were expected to shower and wear clean clothes. The staff also contacted the DCS warning of possible termination of visitation services because of the Parents’ poor hygiene. In Collins’ opinion, the Parents would not “ever be able to get their home in a sufficient condition to return their children to them.” (Tr. 64.)

Home services provider Nancy Koedyker concurred with that opinion. She testified that Andrew made slow progress in remodeling, even when he was unemployed and the Children were out of the home. Cleanliness conditions would temporarily improve, but “backslide.” (Tr. 91.) Koedyker described the provision of services as “spinning our wheels there for awhile.” (Tr. 91.)

After the children were placed in foster care, they manifested sexualized behaviors and were subsequently given psychological evaluations. T.S. and A.S. reported sexual abuse by Kelly’s father. Kelly had alleged that her father had sexually abused her during her childhood, and Andrew was aware of this allegation. Because of this, the Parents tried to “limit” the maternal grandfather’s contact with the Children. (Tr. 196.) However, the grandfather was with the Children as recently as the day he was seen shoveling out the house. The Children also reported that they had seen pornography and had observed the Parents engage in sexual activity.

At the time of the termination decision, the Parents were incarcerated and unemployed and unable to assume the care of their Children. They had historically failed to provide the children with a clean home and adequate supervision. They now ask that we find the past

conduct excusable due to their poverty and further request that we focus upon the recent inheritance of a house. We decline the offer to reweigh the evidence or to speculate that the Parents' next residence will be kept clean, habitable and appropriate for the Children. The DCS presented sufficient evidence that the conditions leading to the Children's removal would not, in reasonable probability, be remedied.

### **Conclusion**

The DCS established by clear and convincing evidence the requisite elements to support the termination of Andrew's and Kelly's parental rights to the Children.

Affirmed.

NAJAM, J., and CRONE, J., concur.